IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 30.8.2007

Coram

The Honourable Mr. Justice M. CHOCKALINGAM

W.P. Nos.12642, 13875 and 13876 of 2004 and
W.P.M.P. Nos.14750, 16322, 16323 and 18315 of 2004

S.A. Balaji .. Petitioner in W.P. No.12642/2004

N. Ravi .. Petitioner in W.P. No.13875/2004

Amrit Thakur ... Petitioner in W.P. No.13876/2004

.vs..

1. Punjab and Sind Bank,
   rep. by Chairman and
   Managing Director,
   Bank House,
   21, Rajendra Place,
   New Delhi.

2. The General Manager (Personnel),
   Punjab and Sind Bank,
   Bank House 21, Rajendra Place,
   New Delhi - 110 008.

3. The Zonal Manager,
   Punjab and Sind Bank,
   Zonal Office, Spencer Towers,
   1st Floor, 770-A, Anna salai,
   Chennai - 600 002. ...Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India, seeking to issue a writ of mandamus, directing respondents 1 and 2 to regularise the services of the petitioners as per the recommendation of the third respondent with effect from the date of their first appointment as temporary Peons and consequential benefits such as seniority, arrears of pay, monetary benefits etc.

For Petitioner : Mr. R. Subramanian

For Respondents : Mrs. S. Vijayadharani

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COMMON ORDER

The petitioners have sought for a writ of mandamus, directing respondents 1 and 2 to regularise the services of the petitioners as per the recommendation of the third respondent with effect from the date of their first appointment as temporary Peons and consequential benefits such as seniority, arrears of pay, monetary benefits etc.

2. Affidavits filed in support of the petitions and counter affidavits are perused. The Court heard the learned counsel appearing on either side.

3. From the submissions made by the learned counsel appearing for the petitioners and the respondents and looking into the material available on record, it could be seen that the petitioners have been working in the respondent-Bank for nearly about two decades as Temporary Peons(sub-staff). They had been in continuous service as temporary Peons (sub-staff) and they had been paid a consolidated salary of Rs.135/- per day for number of working days in a calendar month. They have got fixed working hours and they have to report for duty at fixed hours of work and the same would be carried out till the end of the working hours fixed by the respondent-Bank and in terms of the Tamil Nadu Shops and Establishment Act. The work entrusted to them by the respondent-Bank was supervised by various level of Officers and therefore, there was a master-servant relationship between the respondent-Bank and the petitioners. The work allotted and carried out by them is not of a casual nature, but that of a permanent nature. They have been appointed as Temporary Peons to work in the place of permanent vacancies.

4. The petitioners were doing temporary work in the respondent-Bank and the service conditions were regulated by Bi-partite settlement dated 19.10.1966 as amended more specifically by clause 20.7 and 20.8, wherein, it is stated as follows:-

> " temporary employee will mean "a workman who has been appointed for a limited period for which is of an essentially temporary nature or who is employed temporarily as an additional workmen in connection with a temporary increase in work of a permanent nature and includes a workman other than a permanent workman who is appointed in a temporary vacancy caused by the

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absence of a particular permanent workman";

The respondent-Bank vide Memorandum of Settlement dated 16.10.1992 entered into with the workmen represented by All India Punjab and Sind Bank Staff Organisation under Section 20 (p) and 18(1)(p) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Dispute Central Rules, 1957. The said Memorandum of Settlement was further amended in the year 1994 with regard to para 'a' and 'b' with all other conditions and terms remaining same as stated in the original.

5. Keeping in view of the plight of the temporary Peons and with a view to set at rest all disputes, which have arisen or may arise, the Management and the All India Punjab and Sind Bank Staff Organisation agreed that the case of temporary employees against permanent vacancies at the State level to be notified by the Bank from time to time and has to be availed for absorption in the subordinate cadre in the following manner:-

> " Firstly, by absorbing those employees who have completed 240 days in the preceding 12 months to be reckoned from the date of last served or in any other block of 12 consecutive months commencing from 1.1.1982 to 31.12.1989. Their inter-se seniority would be determined State-wise (emphasis added) on the basis of the date on which they first worked as temporary employee; and
>
> Secondly, and therefore those employees not falling in the above categories but have atleast worked for 90 days from 1.1.1982 to 31.12.1989 shall be given one time opportunity to appear in the selection process of the Bank and the seniority will be determined and selection will be done preferring those who have joined first in the Bank, serial wise i.e. first come first serve basis."

6. In the settlement, it was clearly stated that all temporary employees falling in the above categories irrespective of the fact, whether they applied in response to the respondent-Bank's advertisement or not, would be given opportunity as stated above. The said opportunity would be extended to those employees, who have taken up the matter with Conciliation Machinery/Courts/Tribunals either individually or through Unions. It was further clarified that all cases of temporary employees will be considered, subject to verification of the Bank and in accordance with the Bank's recruitment as against

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permanent vacancies. It is however clarified that the eligibility with regard to age, qualification of the said temporary employees would be reckoned on the date first worked in the Bank.

7. There are three temporary Peons, who are employed by the respondent-Bank, are at present in the State of Tamil Nadu against the four permanent vacancies and when there was zero level of peons, the petitioners are 1 to 3 in the seniority list against the referred vacancies. In such circumstances, enormous time has lapsed and repeated requests were made by the petitioners to the respondent-Bank, but the respondent-Bank have neither considered their request nor regularised their services as sub-staff. Under the circumstances, they are compelled to file the instant writ petitions before this Court.

8. In answer to the above, learned counsel appearing for the respondent-Bank would submit that the first respondent-Bank is a Nationalized Bank under Banking Companies Acquisition and Transfer of Undertaking Act, 1980 and it shall abide by the guidelines stipulated by the Reserve Bank of India and Government of India from time to time. The service conditions of the employees of the Bank are governed by various awards and settlements from time to time. The Bank has got number of permanent employees on its rolls for attending the day-to-day functions. The employees of the Bank are represented by the All India Punjab and Sind Bank Staff Organisation. The recruitment for permanent posts were done strictly in accordance with the Rules and Regulations applicable to the respondent-Bank. However, in the sub-staff level, if need arises, it was open to the concerned branches to engage the available individuals purely on temporary basis from time to time depending upon the exigencies.

9. There was a settlement entered in in the year 1992, which provided for absorption of temporary employees against the permanent vacancies at the state level as notified by the Bank from time to time on certain terms and conditions. It is further agreed in the settlement that the absorption of these temporary employees are subject to verification by the Bank and in accordance with the Bank's recruitment norms against the permanent vacancies. However, it was clarified that insofar as the eligibility with regard to the age and the qualifications of the said temporary employees were concerned, those would be reckoned on the date first worked in the Bank. The terms and conditions in the settlement were subsequently modified by another section 18(1) settlement dated 13.8.1994 and the same was entered into between the Bank and the Staff Organisation.

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The appointments were made based on the above settlements.

10. However, during the year 1995, the ban on fresh recruitment came to be imposed on the Bank. Thereafter, no fresh recruitment has been made and the said ban on recruitment is still in force. The allegation of the petitioners that they were in continuous employment from 1984 is denied. The petitioners were engaged purely on temporary basis depending on the exigencies. Further, it is not necessary that the employees so engaged on temporary basis should remain there in the Bank till its closing hours and on the other hand, they will be relieved immediately if they had no other work to perform. The petitioners were doing only sundry and miscellaneous work. Hence the question of supervision by the Bank does not arise. On that basis also, they cannot claim for regularisation of service. They were doing the allotted work of temporary in nature.

11. Insofar as 1992 settlement and subsequently amended in 1994 is concerned, it is made clear that State level seniority for absorption of temporary employees was prepared and appointments were made based on the above settlement. However, during the year 2001, the ban on fresh recruitment came to be imposed on the Bank. Consequently no fresh recruitment has been made thereafter. The respondent-Bank is ready and willing to consider the names of the petitioners as and when the ban is lifted and the regular process of appointment commenced as per the terms of the settlement dated 16.10.1992 and 13.8.1994. The entire process of absorption of the temporary employees is based on the procedure mentioned in Section 18(1) settlements dated 16.10.1992 and 13.8.1994 subject to Bank's recruitment norms against the permanent vacancies.

12. Under the circumstances, the claim of the petitioners either for recruitment or for regularization cannot be done. If the prayer of the petitioners is granted, granting permanent employment to all those who are being temporarily or casually employed in the respondent-Bank, such a direction would heavily burden the Bank. The Hone'ble Apex Court, while dealing with a similar matter, has held that the Courts ought not to have imposed a financial burden on the employees by such directions, as such directions may turn counter-productive. Under such circumstances, all these three writ petitions, seeking writ of mandamus, or any direction as one asked for, have got to be denied and the same have got to be dismissed.

13. The Court paid its anxious consideration on the submissions made by either side.

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14. The petitioners in these writ petitions have been working in the first respondent-Bank as Temporary Peons (sub-staff) for more than two decades and they have been paid a consolidated salary @ Rs.135/- per day for the number of working days in a calendar month. Their case is that though they were called as temporary Peons, they were entrusted with the work of permanent nature and they have to work for the fixed hours. It has also been supervised by various level of Officers and their service conditions are regulated by Bi-partite settlement dated 19.10.1966. Since they have worked for more than a decade, considering the nature of work and period for which they have worked, their services have to be regularized, but not done so. Though the third respondent sent recommendation to the second respondent to regularize the services of the petitioners, the same has not been done. Even as per the settlement entered into between the staff Association and the Management in the year 1992 and subsequently amended in 1994 is given effect, the petitioners are entitled to the benefit of regularization.

15. The respondent-Bank put forth its defence in short is that there is a ban in the year 2001 which stopped fresh recruitment on the Bank. The Bank is actually a Nationalised one under Banking Companies Acquisition and Transfer of Undertaking Act, 1980 and it shall abide by the guidelines stipulated by the Reserve Bank of India and Government of India from time to time. These petitioners are bound by the settlement originally entered into in 1992 and subsequently amended in the year 1994. Even as per the terms in the settlement, the petitioners cannot seek for any regularisation and even if they are regularised, it is being stopped by the ban 2001.

16. Learned counsel would add further that actually a panel of temporary Peons has been prepared and the names of these petitioners had also appeared in the said panel. But, when the ban comes in 2001, though the Bank is prepared to absorb them, the same could not be done.

17. After considering the submissions made by either side and looking into the materials available on record, the Court is of the considered opinion that direction sought for by the petitioners in the writ petitions has got to be granted. It is not in controversy that these petitioners have been worked in the first respondent-Bank on temporary basis for nearly about two decades. The first contention is that the petitioners have been working for stipulated hours and they are under the supervision by the Officers and their work what is entrusted to

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them is not casual in nature but of permanent nature. There cannot be any quarrel and it cannot be denied now. From the materials available and placed before this Court, the Zonal Manager, on previous occasion, sent communication, whereby he made recommendation that these petitioners have got to be absorbed.

18. The first communication was sent on 22.2.1997 by the Zonal Manager to the Deputy General Manager at New Delhi, wherein it is clearly stated as follows:-

> "Out of the remaining, the following persons are eligible for regular service as per guidelines.
> 1)Y. Ramesh - From Andhra Pradesh
> 2) G. Ashok - from Andhra Pradesh
> 3)L. Ramakrishnan - from Andhra Pradesh
> 4)S.A. Balaji - from Tamil Nadu
> 5)V. Rajan - from Trivandrum (Kerala)
>
> These persons have already worked for more than 90 days from 1.1.1982 to 31.12.1989 as such they are eligible for absorption in regular cadre as per Modified Memorandum of Settlement dated 13.8.94. The remaining persons, Shri Amrit Bahadur Thapa, Shrui Gurdev Singh and Shri N. Ravi does not fulfil the requirement of minimum service from 1.1.82 to 31.12.89. However, all the three have worked for more than 240 days from 1.1.90 onwards. Shrui Amrit Bahadur Thapa and Shri Gurdev Singh have continuously worked as Temporary Peon in B.O. GT. Madras and Zonal Office, Madras respectively for more than 4 years from 1.1.90 onwards and Shri N. Ravi for 667 days.
>
> Our office is having approved strength of 4 subordinate staff and presently we are having only one regular peon. Two have been promoted and one Mr. Ravi Sachdeva expired and under the circumstances we are utilising the services of Shri S.A. Balaji and Shri Amrit Bahadur Thapa as Temporary Peons.
>
> Keeping in view these facts we may be permitted to absorb the abovementioned temporary peons in the regular cadre."

Following this, second recommendation letter in Zonal Office,

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Chennai dated 3.2.1999 was sent by the Zonal Manager to the Deputy General Manager (Personnel). The third letter was sent by the Zonal Manager to the General Manager(Personnel) on 31.12.2001, wherein it is stated as follows:-

> " However, three temporary Peons are working out of the panel of the Bank, who are as under:
>
> 1.Amrit Thakur, Zonal Office, Chennai.
> 2.S.A. Balaji, Zonal Office, Chennai.
> 3.N. Ravi, Extention Counter, H.C.E. Padur
>
> As these persons are working since long, out of the panel as stated above, you are requested to guide in the matter in these three cases."

19. A reading of these communications would make it clear that Peons were available and the services of the petitioners were utilised in the place of regular employment. Despite recommendation letters sent to the General Manager to regularize the services of the petitioners, nothing had happened.

20. The only contention that is put forth by the respondent's side at this juncture is that the petitioners were engaged purely on temporary basis. Though the settlements were actually entered into in 1992 and subsequently in 1994, in view of ban in 2001, the petitioners cannot be regularized. At this juncture, it is pertinent to point out that the letter dated 31.12.2001 was subsequent to the ban in question. Apart from this, a letter was sent by the Zonal Manager on 11.5.2002 wherein it is clearly stated as follows:-

> " The problem faced by Branches with zero level posting of peons strength came up for discussion during the recent Review Meeting held on 10.5.2002. Our worthy Executive Director Chaired the meeting which was also attended by General Manager (P&D) Our worthy Executive Director advised that only those Branches/offices can engage a temporary peon where there is Zero-level of peons and that too only from the existing panel of peons of

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the Bank. We submit that the following temporary peons are in the panel of our zone in the state of Tamil Nadu/Andhra Pradesh as per enclosure:

1. Shri S.A. Balaji
2. Shri N. Ravi
3. Shri Y. Ramesh

The following branches/office have been identified as Zero-level branches for posting of peons.

a) ZM's Secretariat, Zonal office, Chennai
b) Extension counter HME, Padur
c) B.O. Coimbatore
d) B.O. Tirupur
e) B.O. Vijayawada

Keeping in view of the requirements, it is proposed that we may confirm from the branches located in TamilNadu/Andhra Pradesh State that they are not engaging any peon except from the existing panel for the decision conveyed by Worthy Executive Director in the meeting.

Further, we may engage the services of Shri Amrit Takur as temporary peon at Zonal Manager's Scretariat, zonal office, Chennai."

21. From the very reading of letter, it would be quite clear that a need and necessity arises and a meeting was held and the Executive Director chaired the meeting and the names of these petitioners were also stated. It is also quite clear the the ban on new recruitment cannot come suddenly. The respondent-Bank, after utilising the services of the petitioners, who have been employed for the past twenty years, cannot now say that they could not be regularized, by taking shelter that the ban on new recruitment came into force in 2001. Further, no doubt, the settlement that was entered between the parties originally in the year 1992 and subsequently amended in 1994 would bind both the parties. A reading of these settlements would clearly reveal that it was actually in favour of the petitioners. The first settlement of the year 1992 reads as follows:-

" A) Firstly, those employees who have completed 240 days in the preceding

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12 months to be reckoned from the date last served or in any other block of 12 consecutive months commencing from 15.4.1980. Their interest seniority would be determined statewise on the basis of the date on which they first worked as temporary employees as per bank's available records.

B) Thereafter, the other employees not falling in the above category but have atleast worked for 90 days from 1.1.82 to date of this settlement i.e. 16.10.92 shall be given one time opportunity to appear in the selection process of the Bank and their seniority would be determined and selection will be done by preferring those who have joined first in the bank, serialwise that is first-cum-first serve."

22. It is also made clear that all the temporary employees falling in the above categories irrespective of the fact whether they applied in response to the recent Bank's advertisement or not would be given the opportunity as stated above, if they approach the management before the selection commences. It is also quite clear that in the instant case, though representations have been made, the same have not been considered. It is also clarified in the settlement that the eligibility as regards age and qualification of the temporary employees would be reckoned on the date first worked in the Bank. On regularising the temporary employees against the vacancies so determined, their entry and seniority would be reckoned from the date of their joining the services as regular employees on probation in permanent subordinate cadre. After reading the terms in the settlement, it would be futile exercise of the respondent-Bank to contend that there is no question of regularising the temporary employees if at all they are regularised, since the ban is in force, the same cannot be done. The terms of settlement in 1992 and 1994 are in favour of these petitioners. The ban what is found on new recruitment may not be applied to these petitioners herein.

23. Further, the decisions relied on by the petitioners reported in the case of MOHAN CHANDRA GHOSH v. CENTRAL BANK OF INDIA (2007(4) SLR 334) and MINERAL EXPLORATION CORPN. EMPLOYEES' UNION v. MINERAL EXPLORATION CORPN. LTD. ((2000)6 SCC 310) have got full application to the present facts of the case. It is well settled that when there are vacancies, the persons

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are entitled to be absorbed. In the instant case, despite availability of work noticed and the petitioners are being utilised for the work of permanent nature, they cannot now be denied on the ground of ban on new recruitment. It is also an admitted case that their services were utilised by the Bank for more than 240 days i.e. 12 calendar months and they have worked for more than two decades. When vacancies were available, the respondent-Bank cannot take its shelter that there is a ban in 2001 and therefore, they could not regularise the services of the petitioners.

24. Considering the facts and circumstances of the case, it is a fit case that a direction has got to be given to the respondent-Bank. Accordingly, the respondent-Bank is directed to regularise the services of the petitioners as one asked for in these writ petitions. All these writ petitions are ordered accordingly. Consequently, the connected W.P.M.Ps. are closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa.

To

1. Punjab and Sind Bank,
   rep. by Chairman and
   Managing Director,
   Bank House,
   21, Rajendra Place,
   New Delhi.

2. The General Manager (Personnel),
   Punjab and Sind Bank,
   Bank House 21, Rajendra Place,
   New Delhi - 110 008.

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3. The Zonal Manager,
Punjab and Sind Bank,
Zonal Office, Spencer Towers,
1st Floor, 770-A, Anna salai,
Chennai - 600 002.

+3ccs to Mr.R.Subramanian, Advocate Sr 54325,54326 and 54328

+1cc to M/s.S.Vijayadharani, Advocate Sr 54217

BVR (CO)
km/11.9.

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